



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: July 1, 2008

TO: Mayor and Councilmembers

FROM: Engineering Division, Public Works Department

SUBJECT: Public Hearing To Acquire Easements By Possible Eminent Domain
For The Haley/De La Vina Streets Bridge Replacement Project

RECOMMENDATION: That Council:

- A. Accept the Addendum to the Certified Final Environmental Impact Statement/Environmental Impact Report for the Lower Mission Creek Flood Control Project (State Clearing House SCH No. 1998101061, dated March 10, 2008) prepared by the City's Environmental Analyst for the proposed Haley/De La Vina Streets Bridge Replacement Project; and
- B. Adopt, by reading of title only, Resolutions of Necessity by the Council of the City of Santa Barbara for the Acquisition of Certain Real Property and Permanent and Temporary Easements for Construction of Public Street Improvements, Bridge and All Uses Appurtenant Thereto, in Connection with the Haley/De La Vina Streets Bridge Replacement Project, identified as follows:
 - 1. That Real Property Occupied by a Portion of the Mission Creek Floodway, Fronting the 500 Block of De La Vina Street, Shown Together with Santa Barbara County Assessor's Parcel Number 037-161-032;
 - 2. Certain Permanent and Temporary Easements Located on the Real Property Commonly Known as 513 and 517 De La Vina Street, Santa Barbara County Assessor's Parcel Number 037-161-032;
 - 3. Certain Temporary Easements Located on the Real Property Commonly Known as 430 De La Vina Street, Santa Barbara County Assessor's Parcel Number 037-203-021;
 - 4. Certain Permanent and Temporary Easements Located on the Real Property Commonly Known as 208, 210, and 212 West Haley Street, Santa Barbara County Assessor's Parcel Number 037-161-014.

EXECUTIVE SUMMARY:

The Haley/De La Vina Streets Bridge Replacement Project (Project) includes the replacement bridge structure with transitions from bridge to existing creek improvement, road approaches with street, sidewalk and traffic signal reconstruction, property acquisitions, including complete acquisitions and easements, and utility relocation including undergrounding of existing overhead wires. The current 35-foot by 150-foot bridge will be replaced with a 50-foot by 159-foot bridge to accommodate increased hydraulic capacity. Upstream and downstream of the bridge, walls and boulders will be placed to make a transition from the vertical bridge structure to the existing improved creek banks.

This hearing and the adoption of the requested resolutions are required by state law and federal regulations in order to obtain legal possession of all remaining lands and easements (rights-of-way) necessary for the proposed Project, and to thereby enable construction of the Project to be scheduled without delay. The potential for delay and increased Project costs are the primary reasons why the use of eminent domain to acquire the remaining land and rights-of-way may be necessary. The Project is scheduled to begin construction in April 2009.

Although certain required lands and rights-of-way have been acquired by the City successfully, other lands and rights-of-way must still be acquired. In order to ensure they are acquired without delay, the attached proposed Resolutions of Necessity should be adopted by Council to authorize the City Attorney to initiate Superior Court eminent domain litigation, if ultimately necessary, in order to acquire the real property rights needed for construction of the Project. All of the remaining land and rights-of-way are required for the Project, and none can be omitted without cost and schedule consequences.

An Addendum to the previously approved Certified Final Environmental Impact Statement/Environmental Impact Report for the Lower Mission Creek Flood Control Project (EIR) was required because the current Haley/De La Vina Bridge design revealed updated project specific information previously identified in the EIR. None of this new information or revisions to the Project altered any of the environmental conclusions reached in the EIR/EIS. The EIR/EIS Addendum states that there are no new significant impacts to the previously identified impacts.

Even with Council adoption of the proposed Resolutions of Necessity, discussions with owners will continue to possibly acquire them by successful negotiations.

Pursuant to the two-thirds majority vote requirement specified by applicable state statutes, at least five Councilmember approval votes are required for the adoption of the proposed resolutions.

DISCUSSION:

The Project requires the City's acquisition of certain whole properties, and various permanent and temporary rights-of-way, which are identified below and on Attachment 1 (Lands and Rights-of-way Acquisition Details). The lands and rights-of-way must be acquired by the City in accordance with applicable Federal and State laws and guidelines, with oversight provided by the California Department of Transportation (Caltrans) because of the City's eligibility for reimbursement of Project costs using Highway Bridge Replacement and Rehabilitation (HBRR) funds provided by the FHWA.

Project Rights-of-way

As depicted on Attachment 2, three entire properties are required for the Project (two of which have been successfully acquired):

| <u>Address</u> | <u>Owner</u> | <u>Status</u> |
|----------------------------|---------------|----------------------------|
| 434 and 436 De La Vina St. | Smith, et al. | City Ownership Completed |
| 136 W. Haley St. | Galindo | City Ownership Completed |
| 500 Block De La Vina St. | Norton Heirs | Last Known Owner Not Found |

As depicted on Attachment 3, permanent rights-of-way must still be acquired for the Project, as follows:

| <u>Address</u> | <u>Owner</u> | <u>Status</u> |
|-------------------------------|--------------|-------------------------|
| 513 & 517 De La Vina St. | Eggers | Negotiations incomplete |
| 208, 210 and 212 W. Haley St. | Solis | Negotiations incomplete |

As depicted on Attachment 4, temporary rights-of-way are required for the Project (three of which have been acquired successfully):

| <u>Address</u> | <u>Owner</u> | <u>Status</u> |
|-------------------------------|-----------------|-------------------------|
| 119 W. Haley St. | Haskell, et al. | Right-of-way Acquired |
| 132 W. Haley St. | Bolton | Right-of-way Acquired |
| 507 Brinkerhoff Av. | Livernois | Right-of-way Acquired |
| 208, 210 and 212 W. Haley St. | Solis | Negotiations incomplete |
| 430 De La Vina St. | Flint | Negotiations incomplete |
| 513 and 517 De La Vina St. | Eggers | Negotiations incomplete |

Purpose of Hearing

As indicated in Attachment 1, the purpose of the hearing is to determine the public necessity for the lands and rights-of-way to be acquired for the Project, and to make the necessary findings, and to adopt the required Resolutions of Necessity. The location of all lands and rights-of-way still required are shown together on Attachment 5.

At the Council hearing, in addition to adoption of the proposed Resolutions of Necessity, in order to proceed with eminent domain, it is a state requirement to first conduct public hearings concerning each of the required properties or lands and rights-of-way being sought by the City, and, subject to the evidence presented at such hearings, Council should consider adoption of each of the respective Resolutions of Necessity to authorize their acquisition through the use of eminent domain, if it ultimately becomes necessary.

As required by Section 1245.235 et seq. of the California Code of Civil Procedure, written notices were mailed to the respective property owners at least 15 days before the scheduled Council hearings to inform the property owners of the Council's intent to hear any evidence and to consider the possible adoption of the proposed Resolutions of Necessity. The Notices sent to all of the affected owners satisfies all legal noticing requirements for the hearings.

As provided in the state Code of Civil Procedure, the public hearings related to the proposed adoption of each of the respective Resolutions of Necessity should be limited to discussion of the requisite statutory findings specifically set forth in Section 1240.030 of the state Code of Civil Procedure, namely:

- a. That the public interest and necessity require the proposed Project.
- b. That the proposed Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.
- c. That the property described in the resolution is necessary for the proposed Project.
- d. That either the offer required by Section 7267.2 of the California Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

Staff recommends that Council also accept the Addendum to the Certified Final Environmental Impact Statement/Environmental Impact Report for the Lower Mission Creek Flood Control Project prepared by the Project's Environmental Analyst for the proposed Haley/De La Vina Streets Bridge Replacement Project. The Addendum was prepared to address the Project specific elements pertaining to the Lower Mission Creek EIR which have changed since the Final EIR/EIS for the Lower Mission Creek Flood Control Project (State Clearinghouse #1998101061. The Addendum concludes that Project impacts are not substantial and do not involve new significant impacts or a substantial increase in severity of previously identified impacts.)

The Addendum has been made available to the Council in the Council reading file and to the public at the City Clerk's Office or the public counter of the Community Development building at 630 Garden Street.

Pursuant to Section 1245.240 of the California Code of Civil Procedure, the adoption of the proposed Resolutions of Necessity requires approval by at least five Councilmembers. City staff and assigned Hamner, Jewell and Associates agents will continue efforts to acquire them by successful negotiations.

BUDGET/FINANCIAL INFORMATION:

There are sufficient funds in the Streets Capital Fund to purchase the required land and rights-of-way. The funds include a Caltrans reimbursement of 88.53%, paid by FHWA. The City is responsible for 11.47% of the costs.

ATTACHMENT(S):

1. Lands and Rights-of-way Acquisition Details
2. Location of Required Whole Properties
3. Location of Permanent Rights-of-way Still Required
4. Location of Temporary Rights-of-way
5. Location of All Lands and Rights-of-way Still Required

PREPARED BY: John Ewasiuk, Principal Civil Engineer/DI/mj

SUBMITTED BY: Christine F. Andersen, Public Works Director

APPROVED BY: City Administrator's Office

Lands and Rights-of-way Acquisition Details

Independent Appraisals

In accordance with applicable laws and guidelines, the owners of the lands and rights-of-way that must be acquired for the Project are entitled to just compensation, based on appraisals approved by Caltrans. All required appraisals were provided by Stephen G. Schott, MAI, an independent and experienced professional real estate and right-of-way appraiser. Each of the affected owners were invited to accompany the appraiser during site inspections, and to provide any information desired for consideration concerning the possible values of the lands and rights-of-way being sought for the Project. The owners were also advised of their right pursuant to applicable California guidelines to obtain a separate appraisal by an appraiser of their choice, if desired.

Professional Right-of-Way and Relocation Assistance Firm

In order to help ensure compliance with applicable laws and guidelines, on August 21, 2007, Council approved a contract (Agreement No. 22,544) with Hamner, Jewell and Associates (HJA), an experienced and professional right-of-way and relocation assistance consulting firm. HJA was contracted to coordinate timely steps on behalf of the City, to work with City staff and advisors, project design consultants and others, and with property owners and any occupants, to acquire all rights-of-way needed for the Project and to relocate any displaced occupants. The efforts to date by HJA agents and City staff are outlined above and below.

As set forth in the appraisals approved by Caltrans, HJA agents on behalf of the City, initiated written offers to affected owners to purchase the necessary lands and rights-of-way, which fully explained the basis of the City's offer of just compensation in accordance with applicable guidelines. To help foster acceptance of the offers by the affected owners, assigned HJA agents met with them and explained details of the project, content of documents, appraisals and other pertinent matters.

Lands and Rights-of-way Acquired

On April 1, 2008, Council approved purchase agreements and accepted various lands and rights-of-way at 119, 132, and 136 West Haley Street, and along the De La Vina Street rear frontage of 507 Brinkerhoff Avenue. Subsequently, on May 6, 2008, Council approved a purchase agreement and accepted the property at 434 and 436 De La Vina Street.

Relocation of Occupants

As set forth in Federal, State, and local guidelines, the existing eligible occupant of the residence acquired by the City at 136 West Haley Street was relocated with the assistance of HJA agents.

The eligible tenant who occupies the rental unit acquired by the City at 434 De La Vina Street wishes to continue occupancy slightly longer, which is accommodated under an interim rental agreement authorized by Resolution No. 08-033, at which time they will also be relocated with assistance by HJA to make way for the Project.

The few student tenants who occupy the rental unit at 436 De La Vina Street have been determined ineligible for relocation assistance. They vacated their unit on schedule as previously notified by the tenants to the former owners.

Remaining Land and Rights-of-way

To date, the City has made purchase offers for acquisition of land and rights-of-way at the sites identified below (listed as Attachment 5):

| <u>Address</u> | <u>Remarks</u> |
|-------------------------------|--|
| 500 Block De La Vina St. | Mission Creek Floodway; Last Owner Not Located |
| 513 and 517 De La Vina St. | Permanent and Temporary Rights-of-way |
| 430 De La Vina St. | Temporary Rights-of-way |
| 208, 210 and 212 W. Haley St. | Permanent and Temporary Rights-of-way |

500 Block of De La Vina Street - Mission Creek Floodway

The apparent owner of the property underlying the Mission Creek Floodway fronting the 500 Block of De La Vina Street has not been located using reasonably diligent efforts performed by an independent title research consultant to obtain chain of title documents. The property is erroneously shown as a portion of Santa Barbara County Assessor's Parcel Number 037-161-032, although title data last recorded (circa 1920) indicate the owners of the Mission Creek Floodway property are not the owners of adjacent properties.

513 and 517 De La Vina Street - Permanent and Temporary Rights-of-way

The owner of the property at 513 and 517 De La Vina Street, where permanent and temporary rights-of-way are required for construction of public street, bridge, and related Mission Creek improvements, has not accepted the City's offer. The owner has repeatedly declined multiple efforts by assigned HJA agents to discuss the Project, its schedule, and has not responded to the City's need to obtain a signed agreement to acquire the necessary rights-of-way.

430 De La Vina Street - Temporary Rights-of-way

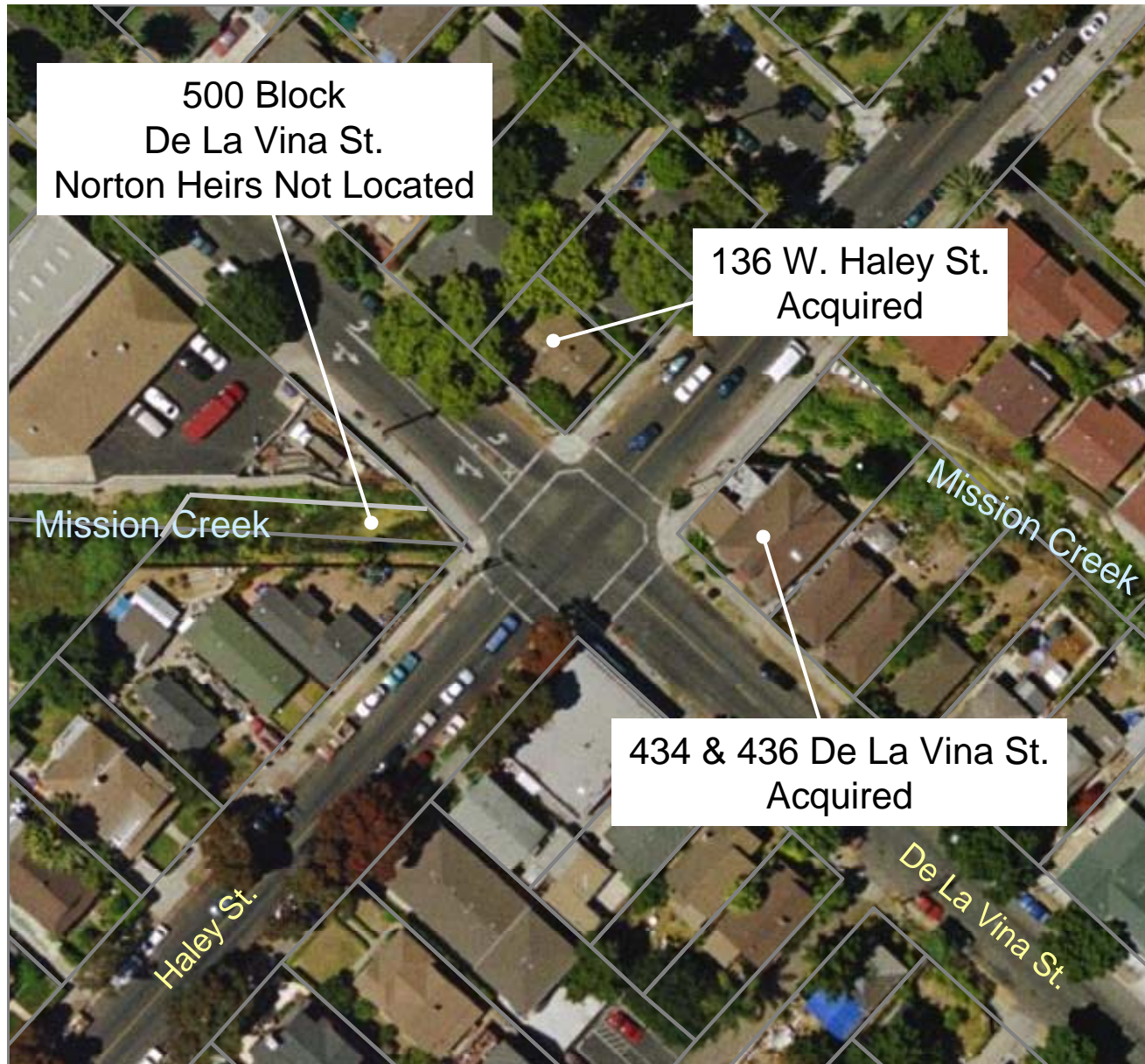
The owners of the property at 430 De La Vina Street, where temporary project rights-of-way are required for alteration and conforming onsite areas along Mission Creek and for conforming new sidewalk improvements fronting the property, have not accepted the City's offer, nor have they provided an independent appraisal to refute the City's approved appraisal. However, the owners have reported to assigned HJA agents that they have initiated steps to obtain a separate appraisal of the temporary rights-of-way by an independent appraiser, and have solicited advice by an attorney experienced in eminent domain matters.

208, 210 and 212 West Haley Street - Permanent and Temporary Rights-of-way

The owner of the property at 208, 210, and 212 West Haley Street, where permanent and temporary rights-of-way are required for construction of public street, bridge, and related improvements, has not accepted the City's offer. The owner has obtained an independent appraisal of the rights-of-way, and has also engaged an attorney to advise her concerning eminent domain matters.

Resolutions of Necessity

Contacts with the owners of the foregoing affected properties are ongoing by HJA agents on behalf of the City to discuss the Project and the City's proposed purchase of the necessary lands and rights-of-way still needed for the Project. In order to ensure their timely acquisition, subject to advice and direction by the City Attorney, HJA agents will continue to discuss all matters so as to successfully acquire the affected properties in the hope of avoiding eminent domain acquisition. If those discussions are ultimately unsuccessful, in order to ensure possession of all required lands and rights-of-way by the City, steps must be taken now to obtain them through the City's possible use of eminent domain.



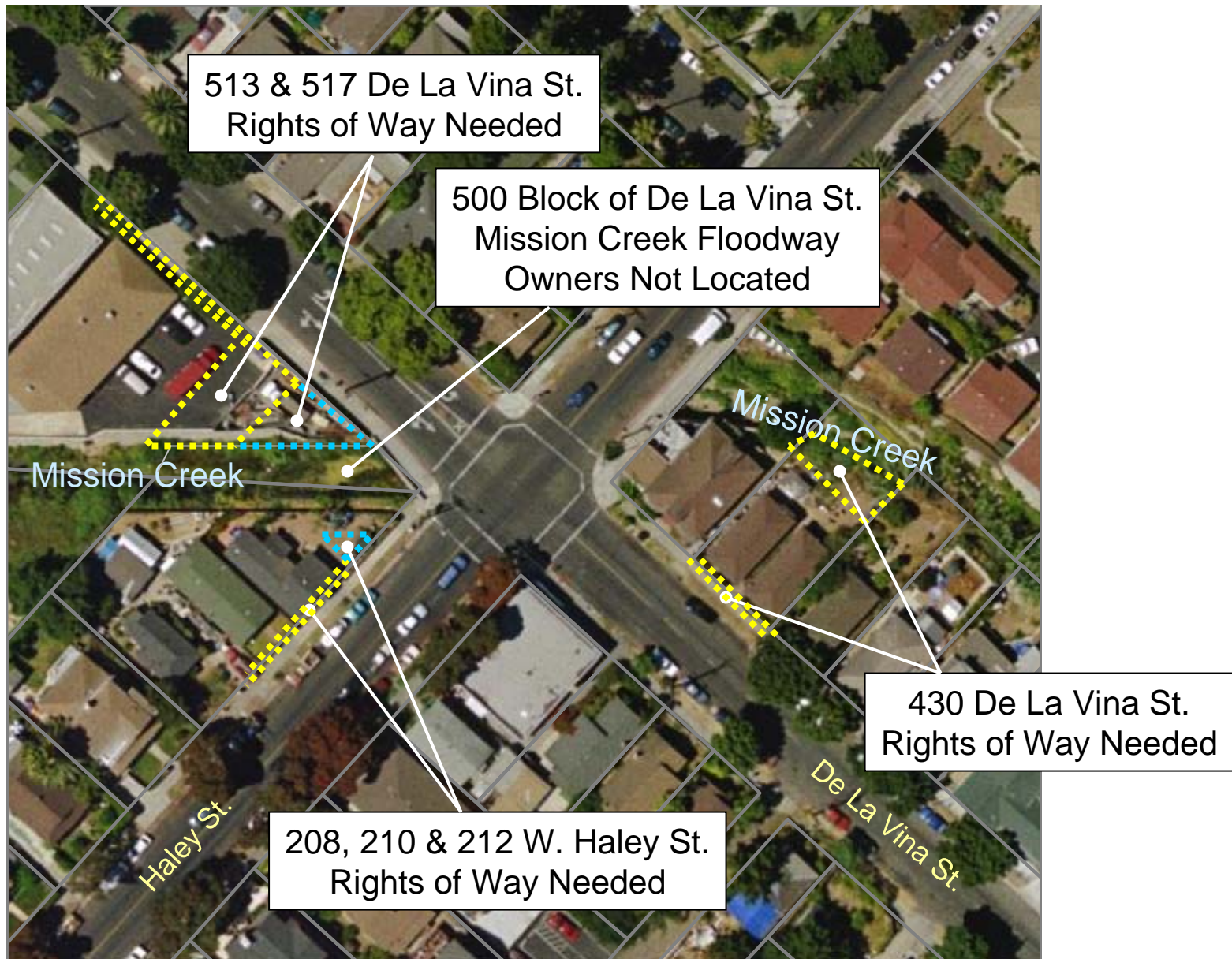
Location of Required Whole Properties



Location of Permanent Rights of Way Still Required



Location of Temporary Rights of Way



Location of All Lands and Rights of Way Still Required

Forward to
City Clerk

PRICE, POSTEL & PARMA LLP

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OUR FILE NUMBER

21799.1

June 19, 2008

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VIA HAND DELIVERY

James L. Armstrong
City Administrator/Clerk/Treasurer
735 Anacapa Street
Santa Barbara, CA 93101

ADMINISTRATOR
SANTA BARBARA

Re: Haley/De La Vina Streets Bridge Replacement Project
Notice of Hearing – 430 De La Vina St.; Request to be Heard at Council Meeting

Dear Mr. Armstrong:

This office represents David and Ella Flint, owners of property located at 430 De La Vina Street, Santa Barbara. On June 5, 2008, Pat Kelly of the City directed a letter to our clients notifying them of an upcoming hearing on July 1, 2008 before the City Council. The purpose of the hearing is to consider the adoption of a Resolution of Necessity to temporarily acquire portions of our clients' property in order to allow for construction of the Haley/De La Vina Streets Bridge Replacement Project ("Project").

The Project will effectively prevent the occupation of our clients' property during the course of the construction of the Project. Although the City has had an appraisal performed of the property rights proposed to be acquired, the City's offer is inadequate to redress my clients' expected damages and loss of income. On behalf of our clients, we therefore ask that you not adopt the Resolution of Necessity, and instead direct City staff to renegotiate this proposed taking with our clients in order to properly compensate them for the impact of the Project. Our clients are in the process of obtaining their own appraisal of the property, and expect to make the results of that appraisal available to City staff at the appropriate time.

We ask that you make this letter a part of the administrative record in connection with this matter. Our clients also request the opportunity to be heard in connection with this matter at the City Council hearing on July 1, 2008.

Very truly yours,



Todd A. Amspoker
For PRICE, POSTEL & PARMA LLP

TAA:lb

James L. Armstrong
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cc: City Council
Pat Kelly
Stephen Wiley
Paul Casey
Jim Colton
Cathy Springford
David and Ella Flint